

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	Criminal No. 12-135 (RJL)
	:	
	:	
v.	:	
	:	
	:	
KWAME R. BROWN,	:	
	:	
Defendant.	:	

GOVERNMENT’S MEMORANDUM IN AID OF SENTENCING

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in aid of sentencing. For the reasons stated below, the government requests that the Court sentence the defendant, Kwame R. Brown, to six days of incarceration – to be served on weekends – followed by three years of supervised release.

I. Background

The defendant was elected as an at-large member of the D.C. Council in 2004. He took office in January 2005. The defendant was re-elected in 2008. In 2010, he was elected Chairman. He took office in that position in January 2011.

At the same time that he was a sitting D.C. Councilmember, the defendant submitted false documents and information in securing a \$166,000 home equity loan, as well as a \$55,335 loan that he used to purchase a boat. Both loans were issued by Industrial Bank, N.A., located in Washington, D.C.

In paperwork for the home equity loan, which the defendant sent by facsimile from his D.C. Council office on September 26, 2005, the defendant provided a forged Verification of Employment Form. In it, he falsely wrote that he held the position of “Vice President of Strategy” in an unnamed company; that he earned \$3,000 per month; that his probability of continued employment was “great;” that he was projected to earn a \$10,000 pay increase on Jan. 3, 2006; and that he was a full-time employee. At the bottom of this form, the defendant forged the name and signature of a friend from college, who was purportedly the president of the company. In fact, the defendant did not have his friend’s permission to sign this form, and his friend was never the defendant’s employer. The defendant filed and submitted this form to overstate his annual income in an effort to win approval of his loan application, believing that, without artificially inflating his income, his request would be rejected. Based on the defendant’s purported income, Industrial Bank issued a loan to Brown on October 12, 2005, in the amount of \$166,000.

The defendant submitted the second loan application on July 25, 2007, this time seeking money for the purpose of purchasing a boat. As part of the application, he submitted an Internal Revenue Service form, purporting to be from a company for which he had worked as a consultant. The form that the defendant submitted showed his 2006 income from the company to be \$85,000. In fact, the defendant’s income from the firm that year totaled \$35,000. Before submitting the form, the defendant had altered the “3” on the document to an “8,” so that it appeared he earned \$85,000, not \$35,000. As with the 2005 loan, the defendant believed that this loan would not be approved without artificially inflating his income. Based on the defendant’s purported income, Industrial Bank issued a loan to Brown on August 30, 2007, in the amount of \$55,335.

The defendant pleaded guilty before this Court to one count of bank fraud, in violation of 18 U.S.C. § 1344, on June 8, 2012.¹ The defendant is scheduled to be sentenced on November 13, 2012.

II. Sentencing Guidelines Calculation

The parties have stipulated that the defendant's offense level is 5 under the voluntary Sentencing Guidelines. That level calls for a sentence of 0 to 6 months of incarceration. Under the plea agreement, the parties have agreed that "a sentence within the Stipulated Guidelines Range would constitute a reasonable sentence in light of all of the factors set forth in 18 U.S.C. § 3553(a)."

III. Statutory Factors

In determining the particular sentence to be imposed, the Court is to consider, inter alia:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed –
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- ...
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a). The Court must impose a sentence sufficient, but not greater than necessary, to comply with § 3553(a). Pursuant to 18 U.S.C. § 3561(a)(1), the defendant is ineligible to be sentenced to a term of probation.

¹ The defendant also pleaded guilty to a misdemeanor campaign finance violation in D.C. Superior Court on the same day.

IV. Discussion

The defendant committed a serious crime. He falsified documents to obtain two loans from a bank insured with public funds. In doing so, the defendant compromised the integrity of the banking system, which – because of the sheer volume of transactions that must occur daily to function – relies heavily on bank customers and loan applicants to be honest in their dealings.

In this case, there are additional circumstances that enhance the seriousness of this already serious offense. The defendant was a sitting D.C. Councilmember when he committed bank fraud. He even used his D.C. Council facsimile to submit one of the forged loan documents, a particularly brazen act. As a Councilmember, the defendant was a public servant responsible for enacting the very type of statute that he violated. Moreover, as an elected official, the defendant was someone in whom the citizens of the District of Columbia placed their trust to be a leader and role model.

The manner in which the defendant committed bank fraud further enhances its seriousness in this case. On the Verification of Employment Form, the defendant forged the signature of his friend without his friend's consent, thus stealing his friend's identity and potentially implicating his friend in the fraudulent scheme. On the Internal Revenue Service form, the defendant increased his annual income by \$50,000. These types of misrepresentations to the bank were calculated and substantial. This was not a case of sloppy bookkeeping on the part of the defendant – he did not merely overvalue an asset by a few dollars or round his salary up to the nearest whole number. The defendant purposefully doctored two forms to increase his income on paper by tens of thousands of dollars. In addition, this was not a one-time lapse in judgment. The defendant did this on two separate occasions almost two years apart.

Adding to the seriousness of this crime is the fact that the defendant broke the law so that he could purchase a boat, a luxury item. Although there is never an excuse for committing bank fraud, doing so to purchase a recreational vehicle is shameless. The defendant did not commit bank fraud to feed his family, pay a medical bill, or give money to the poor. He did this so he could own a 39-foot, 330-horsepower boat, a luxury few people can afford. The defendant's disregard for the law in this context makes his crime that much more appalling.

Notwithstanding the seriousness of the defendant's crime, there are several factors that militate in favor of the government's requested sentence, which is near the low end of the applicable Sentencing Guidelines range. First and foremost, the defendant accepted responsibility for his crime by pleading guilty at an early stage of the prosecution of this case. In doing so, the defendant waived his right to a grand jury indictment and a jury trial, helping to preserve limited government and judicial resources. As part of his plea agreement, the defendant also agreed to cooperate with law enforcement officials.² Next, the defendant has no prior criminal convictions. Third, the defendant did not default on these loans. Although the bank – and its insurer, the taxpayers – was subjected to increased and unknown risk of financial loss, fortunately there has not been any actual financial loss in this particular case, as of yet. Finally, the defendant resigned from his position as Chairman of the D.C. Council.

The defendant has paid a heavy price for his crime, as he should. He once was one of the most powerful elected officials in the District of Columbia with strong popular support from the community and a bright political future. After sentencing, he will be a convicted felon with no

² At the sentencing hearing, the government can provide additional details regarding the defendant's cooperation at the bench.

political office and, according to the U.S. Probation Office, he will be unemployed. Given all of these factors, the government believes that a sentence of six days of incarceration – to be served on weekends – followed by three years of supervised release will be sufficient to satisfy the statutory factors in § 3553(a).

V. Conclusion

For the foregoing reasons, the government respectfully requests that the Court sentence the defendant to six days of incarceration – to be served on weekends – followed by three years of supervised release.

Respectfully submitted,

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